



California Fair Political Practices Commission

August 20, 1986

Axel Christiansen
City Attorney
123 East 4th Street
Madera, CA 93638

Re: Your Request for Advice
Our File No. A-86-242

Dear Mr. Christiansen:

Thank you for your letter requesting advice concerning the duties of Madera City Councilmembers Roy Ben Lyon and Edward J. Boyle under the conflict of interest provisions of the Political Reform Act (the "Act").^{1/}

QUESTION

Councilmember Lyon is a licensed general contractor and Councilmember Boyle is a licensed electrical contractor. May Councilmembers Lyon and Boyle participate in a City Council decision to adopt a new building code which would provide for an increase of approximately 15-percent in the fees charged for all building permits?

CONCLUSION

Councilmember Lyon may participate in a City Council decision to adopt a new building code which would provide for an increase of approximately 15-percent in the fees charged for all building permits. Councilmember Boyle may participate in that decision unless it is reasonably foreseeable that the decision would materially increase the expenses of any of his customers.

ANALYSIS

The Madera City Council is faced with a decision regarding building permit fees. The initial proposal before the City Council was to increase all building permit fees by approximately 47-percent. You stated in your letter that the initial proposal was greeted with resistance locally, so the

^{1/} Government Code Sections 81000-91015. All statutory references are to the Government Code unless otherwise noted.

hearing was continued for further study and recommendation by the City staff and local building industry association officials. The proposal now under consideration is the adoption of a fee schedule for building permits that would increase those fees by approximately 15 percent.

Section 87100 prohibits a public official from making, participating in, or using his official position to influence a governmental decision in which he knows or has reason to know he has a financial interest. An official has a financial interest in a decision if it is reasonably foreseeable that the decision will have a material financial effect, distinguishable from the effect on the public generally, on the official or a member of his or her immediate family, or on:

(a) Any business entity in which the public official has a direct or indirect investment worth one thousand dollars (\$1,000) or more.

(b) Any real property in which the public official has a direct or indirect interest worth one thousand dollars (\$1,000) or more.

(c) Any source of income, other than gifts and other than loans by a commercial lending institution in the regular course of business on terms available to the public without regard to official status, aggregating two hundred fifty dollars (\$250) or more in value provided to, received by or promised to the public official within 12 months prior to the time when the decision is made.

(d) Any business entity in which the public official is a director, officer, partner, trustee, employee, or holds any position of management.

(e) Any donor of, or any intermediary or agent for a donor of, a gift or gifts aggregating two hundred fifty dollars (\$250) or more in value provided to, received by, or promised to the public official within 12 months prior to the time when the decision is made.

Section 87103(a)-(e).

You have informed us that Councilmember Lyon is a licensed general contractor, but is inactive in the business except for repair work on rental properties he owns and remodeling or repair work for individuals who may request his services. In each of the 1984-85 and 1985-86 fiscal years he obtained one building permit.

Councilmember Boyle is a licensed electrical contractor who owns 10-percent or more of an electrical contracting business. From time to time he performs subcontract work for developers. During the 1984-85 fiscal year, Councilmember Boyle obtained four building permits, and he obtained one building permit during the 1985-86 fiscal year. Although Councilmember Boyle is active as a subcontractor, the general contractors with whom he works usually obtain the necessary building permits. Due to his percentage ownership of the business, Councilmember Boyle's customers are considered sources of income to him, based on his pro rata share of the gross receipts. Section 82030(a). Therefore, it is necessary to consider the effect of the building permit fee increases on the general contractors or other customers who are sources of income of \$250 or more to Councilmember Boyle, as well as the effect of those fee increases on Councilmember Boyle's electrical contracting business.

Commission Regulation 2 Cal. Adm. Code Section 18702.22/ (copy enclosed) sets forth monetary guidelines for determining whether the effect of a decision on a business entity will be considered material. These guidelines are based on the size of the business entity involved and whether it is publicly traded. The appropriate standard for Councilmember Lyon and Councilmember Boyle, with respect to their own contracting businesses, is contained in Regulation 18702.2(g)(2). According to this standard, the effect of the building permit fee increases will be considered material for either Councilmember if it is reasonably foreseeable that his contracting business will incur additional expenses for a fiscal year in the amount of \$2,500 or more.

Based on the small number of building permits obtained in recent years by Councilmember Lyon (two permits in the last two years) and Councilmember Boyle (five permits in the last two years), we think it is unlikely that either Councilmember's business will incur \$2,500 or more in additional expenses for a fiscal year as a result of the 15-percent increase in the building permit fees. According to the information you provided with your letter, the fee for a building permit on a project with a total valuation of \$100,000 would increase from \$433 to \$498.15, or by a total of \$65.15. Therefore, if either Councilmember Lyon or Councilmember Boyle were to obtain building permits for 39 or more projects, each with a total valuation of \$100,000, the 15-percent fee increase would have a material financial effect on his business. Although we do not

^{2/} Regulation 2 Cal. Adm. Code Sections 18000, et seq., all references to regulations are to Title 2, Division 6 of the California Administrative Code.

Axel Christiansen
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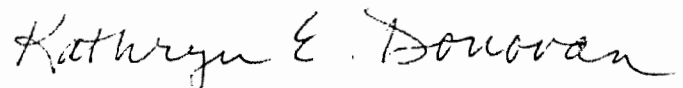
know whether the total valuation for any of the building permits obtained during the last two years by Councilmembers Lyon and Boyle was as much as \$100,000, they each obtained far less than 39 permits. These facts indicate that it is not reasonably foreseeable that the fee increase will be material as to either Councilmember's contracting business.

As discussed above, Councilmember Boyle must also consider whether the increase in building permit fees will materially affect any of his customers who are sources of income of \$250 or more to him, based on his pro rata share of the gross receipts from his electrical contracting business. For example, if one of those customers is a general contractor to whom Regulation 18702.2(g) would apply,^{3/} and it is reasonably foreseeable that, in a fiscal year, that general contractor will obtain building permits for at least 39 projects, each with a total valuation of \$100,000, Councilmember Boyle must disqualify himself from participating in the decision to increase the building permit fees. We do not have sufficient information about Councilmember Boyle's customers, or the level of building activity in which they engage, to provide more specific advice as to whether Councilmember Boyle may participate in the City Council's decision.

Having concluded that at least Councilmember Lyon may participate in the City Council decision, the City Council will have a minimum of three members available to make the decision. Therefore, we need not address your question regarding whether the rule of "legally required participation" in Section 87101 applies in this case.

If you have any further questions regarding this matter, please contact me at (916) 322-5901.

Very truly yours,



Kathryn E. Donovan
Counsel
Legal Division

KED:km
Enclosures

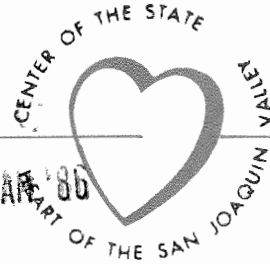
^{3/} Regulation 18702.2(g) generally applies to small, closely-held corporations, sole proprietorships or partnerships, which are not qualified for public sale in California.

City of Madera

205 WEST 4TH STREET
CITY HALL

MADERA, CA 93638

July 18, 1986



DEPARTMENT Legal
123 East Fourth Street
Madera, California 93638

Fair Political Practices Commission
The Travelers Business Center
428 J Street
Suite 800
Sacramento, California 95814

Attn: Catherine E. Donovan
Counsel
Legal Division

Gentlemen:

Pursuant to my recent telephone conversation with Ms. Donovan, I am submitting this written request for an opinion from your office which I have been authorized and directed to do by the Madera City Council as a whole and specifically Councilmembers Roy Ben Lyon and Edward J. Boyle. Mr. Lyon resides at 217 High Street, Madera, California and he is a licensed general contractor. Mr. Boyle resides at 1614 Jennings, Madera, California and is a licensed electrical contractor.

If you will refer to your previous Advice No. A-85-113 you will find pertinent data relative to these gentlemen which will assist you in responding to this inquiry.

The problem that now exists arises out of a vacancy on the City Council. Prior to the June Primary Elections, the City's Mayor, an attorney, ran for the office of Justice Court Judge of a newly created judicial district here in Madera County. He won the election and since there was a vacancy in this new court, his appointment became effective almost immediately and his resignation from the City Council was effective June 30, 1986.

Prior to the election the City had scheduled public hearings on the adoption of new building codes (Building, Mechanical, Electrical, Administrative, etc., etc.) and the Council was going to be asked to consider increases of administration and permit fees by

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approximately forty-seven percent. The magnitude of these increases, however, has been resisted locally and the hearing continued for further study and recommendation by the staff and local building industry association officials with whom the staff had been in contact.

However, after the resignation of the Mayor, the City now finds itself in a position with two Councilmen who can vote on an ordinance that could provide for an increase, but because of the connection of Councilmen Boyle and Lyon with the building industry, and past history in the City with potential conflicts of interest, there is a great deal of sensitivity as to the propriety of Councilmen Boyle and Lyon voting or even participating in any discussions that pertain to fees.

As supplementary information contained in my letter to you of May 29, 1985, on the previous issue we had, please be informed that during the fiscal year 1984-85, Councilmember Lyon obtained one permit and in 1985-86, one additional permit. Councilmen Lyon is however inactive as a general contractor and his permit activity is usually limited to maintenance or construction of buildings that he owns. For example, there was a recent fire on property owned by Councilmen Lyon and he was active in its repair.

Councilmen Boyle, during fiscal year 1984-85, obtained four permits and one permit in fiscal year 1985-86, but he is active as a subcontractor and works with general contractors who obtain all permits.

In accordance with your request, I am enclosing herewith copies of the current fees which are being charged under the 1979 Edition of the Building Code and a proposed increased fee schedule which would be triggered by adoption of the 1985 codes.

The reason this is critical is that Government Code Section 36936 requires the vote of at least three Councilmen for passage of all ordinances and unless either Councilmen Boyle or Lyon are allowed to vote, the City will be unable to enact the 1985 Building Codes until after the November, 1986, election at which time the present vacancy on the Council will be filled.

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I hope the information set forth in this letter plus the material in your file No. A-85-113 will enable you to provide me with an opinion as to the propriety of either Councilmen Boyle or Lyon voting on the issue of increasing the fees referred to herein.

Yours very truly,

A handwritten signature in cursive script, appearing to read "Axel E. Christiansen", written in dark ink.

AXEL E. CHRISTIANSEN
City Attorney
City of Madera

AEC:dg

Enclosures

cc: All Councilmembers

ADOPTION OF 1985 UNIFORM CODES
June 18, 1986

TABLE NO. 3-A -- BUILDING PERMIT FEE

TOTAL VALUATION	FEE
\$1.00 to \$500.00	\$11.50
\$501.00 to \$2,000.00	\$11.50 for the first \$500.00 plus \$1.73 for each additional \$100.00 or fraction thereof, to and including \$2,000.00
\$2,001.00 to \$25,000.00	\$37.45 for the first \$2,000.00 plus \$6.90 for each additional \$1,000.00 or fraction thereof, to and including \$25,000.00
\$25,001.00 to \$50,000.00	\$196.15 for the first \$25,000.00 plus \$5.18 for each additional \$1,000.00 or fraction thereof, to and including \$50,000.00
\$50,001.00 to \$100,000.00	\$325.65 for the first \$50,000.00 plus \$3.45 for each additional \$1,000.00 or fraction thereof, to and including \$100,000.00
\$100,001.00 and up	\$498.15 for the first \$100,000.00 plus \$2.88 for each additional \$1,000.00 or fraction thereof
OTHER INSPECTIONS AND FEES:	
1. Inspections outside of normal business hours.....	\$27.50 per hour (minimum charge -- two hours)
2. Reinspection fee assessed under provisions of Section 305(h).....	\$17.25 each
3. Inspections for which no fee is specifically indicated.....	\$20.00 per hour (minimum charge -- one-half hour)
4. Additional plan review required by changes, addi- tions or revisions to approved plans.....	\$26.00 per hour (minimum charge -- one-half hour)

ADOPTION OF 1985 UNIFORM CODES
June 18, 1986

FEE SCHEDULE

VALUATION	FEE	VALUATION	FEE
\$ 1 - \$ 500	\$ 11.50	\$ 31,001 - \$ 32,000	\$232.41
501 - 600	13.23	32,001 - 33,000	237.59
601 - 700	14.96	33,001 - 34,000	242.77
701 - 800	16.69	34,001 - 35,000	247.95
801 - 900	18.42	35,001 - 36,000	253.13
901 - 1,000	20.15	36,001 - 37,000	258.31
1,001 - 1,100	21.88	37,001 - 38,000	263.49
1,101 - 1,200	23.61	38,001 - 39,000	268.67
1,201 - 1,300	25.34	39,001 - 40,000	273.85
1,301 - 1,400	27.07	40,001 - 41,000	279.03
1,401 - 1,500	28.80	41,001 - 42,000	284.21
1,501 - 1,600	30.53	42,001 - 43,000	289.39
1,601 - 1,700	32.26	43,001 - 44,000	294.57
1,701 - 1,800	33.99	44,001 - 45,000	299.75
1,801 - 1,900	35.72	45,001 - 46,000	304.93
1,901 - 2,000	37.45	46,001 - 47,000	310.11
2,001 - 3,000	44.35	47,001 - 48,000	315.29
3,001 - 4,000	51.25	48,001 - 49,000	320.47
4,001 - 5,000	58.15	49,001 - 50,000	325.65
5,001 - 6,000	65.05	50,001 - 51,000	329.10
6,001 - 7,000	71.95	51,001 - 52,000	332.55
7,001 - 8,000	78.85	52,001 - 53,000	336.00
8,001 - 9,000	85.75	53,001 - 54,000	339.45
9,001 - 10,000	92.65	54,001 - 55,000	342.90
10,001 - 11,000	99.55	55,001 - 56,000	346.35
11,001 - 12,000	106.45	56,001 - 57,000	349.80
12,001 - 13,000	113.35	57,001 - 58,000	353.25
13,001 - 14,000	120.25	58,001 - 59,000	356.70
14,001 - 15,000	127.15	59,001 - 60,000	360.15
15,001 - 16,000	134.05	60,001 - 61,000	363.60
16,001 - 17,000	140.95	61,001 - 62,000	367.05
17,001 - 18,000	147.85	62,001 - 63,000	370.50
18,001 - 19,000	154.75	63,001 - 64,000	373.95
19,001 - 20,000	161.65	64,001 - 65,000	377.40
20,001 - 21,000	168.55	65,001 - 66,000	380.85
21,001 - 22,000	175.45	66,001 - 67,000	384.30
22,001 - 23,000	182.35	67,001 - 68,000	387.75
23,001 - 24,000	189.25	68,001 - 69,000	391.20
24,001 - 25,000	196.15	69,001 - 70,000	394.65
25,001 - 26,000	201.33	70,001 - 71,000	398.10
26,001 - 27,000	206.51	71,001 - 72,000	401.55
27,001 - 28,000	211.69	72,001 - 73,000	405.00
28,001 - 29,000	216.87	73,001 - 74,000	408.45
29,001 - 30,000	222.05	74,001 - 75,000	411.90
30,001 - 31,000	227.23	75,001 - 76,000	415.35

ADOPTION OF 1985 UNIFORM CODES

June 18, 1986

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FEE SCHEDULE

VALUATION	FEE	VALUATION	FEE
\$ 76,001 - \$ 77,000	\$418.80	\$ 88,001 - \$ 89,000	\$460.20
77,001 - 78,000	422.25	89,001 - 90,000	463.65
78,001 - 79,000	425.70	90,001 - 91,000	467.10
79,001 - 80,000	429.15	91,001 - 92,000	470.55
80,001 - 81,000	432.60	92,001 - 93,000	474.00
81,001 - 82,000	436.05	93,001 - 94,000	477.45
82,001 - 83,000	439.50	94,001 - 95,000	480.90
83,001 - 84,000	442.95	95,001 - 96,000	484.35
84,001 - 85,000	446.40	96,001 - 97,000	487.80
85,001 - 86,000	449.85	97,001 - 98,000	491.25
86,001 - 87,000	453.30	98,001 - 99,000	494.70
87,001 - 88,000	456.75	99,001 - 100,000	498.15

Building Permit Fees
Table No. 3-A
1979 Uniform Building Code

<u>Total Valuation</u>		<u>Permit Fee</u>	<u>Total Valuation</u>		<u>Permit Fee</u>
\$ 1 -	\$ 500	10.00	\$30,001 -	\$31,000	197.50
501 -	600	11.50	31,001 -	32,000	202.00
601 -	700	13.00	32,001 -	33,000	206.50
701 -	800	14.50	33,001 -	34,000	211.00
801 -	900	16.00	34,001 -	35,000	215.50
901 -	1,000	17.50	35,001 -	36,000	220.00
1,001 -	1,100	19.00	36,001 -	37,000	224.50
1,101 -	1,200	20.50	37,001 -	38,000	229.00
1,201 -	1,300	22.00	38,001 -	39,000	233.50
1,301 -	1,400	23.50	39,001 -	40,000	238.00
1,401 -	1,500	25.00	40,001 -	41,000	242.50
1,501 -	1,600	26.50	41,001 -	42,000	247.00
1,601 -	1,700	28.00	42,001 -	43,000	251.50
1,701 -	1,800	29.50	43,001 -	44,000	256.00
1,801 -	1,900	31.00	44,001 -	45,000	260.50
1,901 -	2,000	32.50	45,001 -	46,000	265.00
2,001 -	3,000	38.50	46,001 -	47,000	269.50
3,001 -	4,000	44.50	47,001 -	48,000	274.00
4,001 -	5,000	50.50	48,001 -	49,000	278.50
5,001 -	6,000	56.50	49,001 -	50,000	283.00
6,001 -	7,000	62.50	50,001 -	51,000	286.00
7,001 -	8,000	68.50	51,001 -	52,000	289.00
8,001 -	9,000	74.50	52,001 -	53,000	292.00
9,001 -	10,000	80.50	53,001 -	54,000	295.00
10,001 -	11,000	86.50	54,001 -	55,000	298.00
11,001 -	12,000	92.50	55,001 -	56,000	301.00
12,001 -	13,000	98.50	56,001 -	57,000	304.00
13,001 -	14,000	104.50	57,001 -	58,000	307.00
14,001 -	15,000	110.50	58,001 -	59,000	310.00
15,001 -	16,000	116.50	59,001 -	60,000	313.00
16,001 -	17,000	122.50	60,001 -	61,000	316.00
17,001 -	18,000	128.50	61,001 -	62,000	319.00
18,001 -	19,000	134.50	62,001 -	63,000	322.00
19,001 -	20,000	140.50	63,001 -	64,000	325.00
20,001 -	21,000	146.50	64,001 -	65,000	328.00
21,001 -	22,000	152.50	65,001 -	66,000	331.00
22,001 -	23,000	158.50	66,001 -	67,000	334.00
23,001 -	24,000	164.50	67,001 -	68,000	337.00
24,001 -	25,000	170.50	68,001 -	69,000	340.00
25,001 -	26,000	175.00	69,001 -	70,000	343.00
26,001 -	27,000	179.50	70,001 -	71,000	346.00
27,001 -	28,000	184.00	71,001 -	72,000	349.00
28,001 -	29,000	188.50	72,001 -	73,000	352.00
29,001 -	30,000	193.00	73,001 -	74,000	355.00

Total ValuationPermit Fee

\$74,001 - \$75,000	358.00
75,001 - 76,000	361.00
76,001 - 77,000	364.00
77,001 - 78,000	367.00
78,001 - 79,000	370.00
79,001 - 80,000	373.00
80,001 - 81,000	376.00
81,001 - 82,000	379.00
82,001 - 83,000	382.00
83,001 - 84,000	385.00
84,001 - 85,000	388.00
85,001 - 86,000	391.00
86,001 - 87,000	394.00
87,001 - 88,000	397.00
88,001 - 89,000	400.00
89,001 - 90,000	403.00
90,001 - 91,000	406.00
91,001 - 92,000	409.00
92,001 - 93,000	412.00
93,001 - 94,000	415.00
94,001 - 95,000	418.00
95,001 - 96,000	421.00
96,001 - 97,000	424.00
97,001 - 98,000	427.00
98,001 - 99,000	430.00
99,001 - 100,000	433.00



California Fair Political Practices Commission

July 25, 1986

Axel Christiansen
Madera City Attorney
205 West 4th Street
Madera, CA 93637

Re: 86-242

Dear Mr. Christiansen:

Your letter requesting advice under the Political Reform Act has been received on July 22, 1986 by the Fair Political Practices Commission. If you have any questions about your advice request, you may contact me directly at (916) 322-5901.

We try to answer all advice requests promptly. Therefore, unless your request poses particularly complex legal questions, or unless more information is needed to answer your request, you should expect a response within 21 working days.

Very truly yours,

Kathryn E. Donovan
Counsel
Legal Division

KED:plh